

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claims 3 and 43 have been canceled in this paper. Claims 1, 2, 8, 10, 15-16, 19-22, and 41-42 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 1-2, 4-33, 35-42 and 44 are pending and are under active consideration.

Claims 4-7, 14, 23-29, 32-33, 35-40 and 44 have been allowed.

Claims 1-3, 8-12, 15, 19-22, 30-31 and 41-43 stand rejected under 35 U.S.C. 102(b) “as being anticipated by Rogers et al (US 6416496).” In support of the rejection, the Patent Office states the following:

Rogers discloses a delivery apparatus comprising a tube (tube exit), a device for monitoring the administration of fluids, a casing 150, an electronic circuit mounted within the casing, and a metering device (col. 13-14). The device includes a timer (Col. 14, lines 38-40). The casing comprises a lower housing and an upper housing pivotally connected by a hinge (col. 13, lines 22-23). The device includes an externally visible display 178 with an input 194 (Col. 14, lines 5-10).

Rogers does not disclose that the device is specifically for the administration of enteral nutrition. Since the instant claim is drawn to an apparatus and not a method, the limitation regarding the use of the device with a feeding tube is interpreted to be an intended use recitation. Enteral feeding tube is interpreted to mean a tube used to deliver fluid through an enteral route of administration which may include orally, through a nasogastric feeding tube, or rectally, for example. Therefore, the tube of Rogers is capable of delivering any type of fluid to a patient orally or through the nose and into the stomach. Applicant has failed to positively recite any structural features that would differentiate the claimed invention from any type of delivery tube that could be used to deliver fluids orally.

Insofar as the subject rejection relates to claims 3 and 43, the rejection is moot in view of Applicant's cancellation herein of claims 3 and 43. Insofar as the subject rejection relates to claims 1-2, 8-12, 15, 19-22, 30-31 and 41-42, Applicant respectfully traverses the subject rejection.

With respect to claim 1, from which claim 2 depends, Applicant notes that claim 1 has been amended and now recites “[t]he combination of:

(a) an enteral feeding tube, said enteral feeding tube including a longitudinally-extending bore and an open proximal end, and

(b) a device for monitoring the administration of enteral nutritional fluids into the open proximal end of said enteral feeding tube, said device comprising,

(i) a casing coupled to the open proximal end of said enteral feeding tube, said casing being shaped to define a lumen in fluid communication with the longitudinally-extending bore of said enteral feeding tube, said lumen including an inlet and an outlet,

(ii) an electronic control circuit mounted within said casing, and

(iii) a metering device positioned within the lumen to measure fluid flow therethrough.”

Claim 1 is neither anticipated by nor rendered obvious over Rogers et al. for at least the reason that Rogers et al. does not teach or suggest a monitoring device comprising, amongst other things, a metering device positioned within a lumen that is in fluid communication with the longitudinally-extending bore of an enteral feeding tube, said metering device being used to measure fluid flow through the lumen. The Patent Office is apparently taking the position that a metering device is disclosed at cols. 13-14 of Rogers et al. Applicant respectfully disagrees and respectfully submits that Rogers et al. does not teach or suggest any metering device for measuring fluid flow

through the lumen and into the feeding tube. Instead, Rogers et al. teaches a cartridge having predetermined quantities of desired fluids that may be dispensed therefrom at desired rates by using a roller or bladder. Although Rogers et al. does teach indicator lights to indicate that fluid is either being dispensed or not being dispensed from the cartridge, Rogers et al. neither teaches nor suggests any device for measuring the amount of fluid that is actually being dispensed at any given time.

With respect to claims 8 and 9, Applicant notes that claim 8, from which claim 9 depends, has been amended in this paper so that it now depends from allowed claim 4. Therefore, based at least on their respective dependencies, claims 8 and 9 are patentable over Rogers et al.

With respect to claims 10-12, Applicant notes that claim 10, from which claims 11 and 12 depend, has been amended in this paper. Applicant respectfully submits that claim 10 is patentable over Rogers et al. for at least similar reasons to those discussed above in connection with claim 1.

With respect to claim 15, Applicant notes that claim 15 has been amended in this paper so that it now depends from allowed claim 14. Therefore, based at least on its dependency, claim 15 is patentable over Rogers et al.

With respect to claims 19-22, Applicant notes that claims 19-22 have been amended in this paper so that each now depends from allowed claim 4. Therefore, based at least on their respective dependencies, claims 19-22 are patentable over Rogers et al.

With respect to claims 30 and 31, Applicant respectfully submits that the rejection is in error. This is because claim 30 depends from allowed claim 23 and because claim 31 depends from claim 30. Therefore, based at least on their respective dependencies from an allowed claim, claims 30 and 31 are patentable over Rogers et al.

With respect to claims 41 and 42, Applicant notes that claim 41, from which claim 42 depends, has been amended in this paper. Applicant respectfully submits that claim 41 is patentable over Rogers et al. for at least similar reasons to those discussed above in connection with claim 1.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 13 and 35 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Rogers.” In support of the rejection, the Patent Office states the following:

Claims 13, 35 differ from Rogers in calling for the tube connector to be an outwardly projecting barb. Rogers is silent as to the tube connector. However, it is well known in the art to use a barbed connector to connect a tube to an upstream device because it is secure and releasable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Rogers to include a barbed tube connector.

Applicant respectfully traverses the subject rejection.

Insofar as the subject rejection relates to claim 13, Applicant notes that claim 13 depends ultimately from claim 10. Claim 10 is patentable over Rogers et al. for at least the reasons given above. Therefore, based at least on its dependency from claim 10, claim 13 is patentable over Rogers et al.

Insofar as the subject rejection relates to claim 35, Applicant notes that claim 35 depends from claim 32, which has been allowed in the outstanding Office Action. Therefore, based at least on its dependency from claim 32, claim 35 is patentable over Rogers et al. Moreover, Applicant respectfully notes that, elsewhere in the outstanding Office Action, the Patent Office indicates that claim 35 is allowed. Therefore, it would appear that the inclusion of claim 35 in the subject rejection is a clerical error.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 16-18 stand objected to “as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

Without acquiescing in the propriety of the objection, Applicant has rewritten claim 16 in independent form, claims 17-18 depending from claim 16. Therefore, for at least the above reason, the subject objection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is

required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Kriegsman & Kriegsman

By: Edward M. Kriegsman

Edward M. Kriegsman
Reg. No. 33,529
30 Turnpike Road, Suite 9
Southborough, MA 01772
(508) 481-3500

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 5, 2009.

Edward M. Kriegsman

Edward M. Kriegsman

Reg. No. 33,529

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